IN THE

UNITED STATES SUPREME COURT.

October Term, 1943.

COSGROVE-MEEHAN COAL CORPORATION, COSGROVE & COMPANY, INC., COSGROVE-MEEHAN COAL COMPANY OF PENNSYLVANIA, AND LENOX COAL COMPANY,

Petitioners,

v.

MAURICE P. ANGLAND,

Respondent.

BRIEF IN SUPPORT OF PETITION.

The facts set forth in the foregoing petition disclose that respondent filed a claim for allowance to him of compensation for individual services performed while he was a member of a bondholders' committee prior to the filing of the petitions for reorganization as an administration expense, and that he filed no claim as a creditor. The District Court found that respondent had traded in securities of the petitioners in violation of the provisions of Section 249 of the Bankruptcy Act, as amended (11 U. S. C. A. § 649), and was consequently disqualified from receiving compensation.

The only question before the Circuit Court of Appeals was whether or not the District Court had erred in disallowing compensation to respondent as an administration expense. Upon this question it agreed with the District Court, but gratuitously determined that respondent had a creditor claim rather than an administration claim which

should receive the further consideration of the District Court, in startling disregard of the facts disclosed in the record:

(1) That the bar order on the filing of creditors' claims had fallen on November 1, 1937;

(2) That the District Court had ordered complete distribution of the estate in its decree confirming the plan of reorganization dated June 6, 1942;

(3) That the District Court in paragraph (3) of said order had again specifically barred all creditors' claims not theretofore filed as required by Section 224 (1) of Chapter X (11 U. S. C. A. § 624 (1));

(4) That the District Court had completely divested itself of all jurisdiction other than that specifically reserved by that order;

(5) That no application was pending before the District Court for alteration or modification of the plan of reorganization;

(6) That the time for appeal from the order confirming the plan had expired; and

(7) The plan, therefore, had become final.

The Circuit Court of Appeals ignored the fact that any reopening of said proceedings so as to permit the allowance of respondent's claim would materially and adversely affect the rights of other creditors since it would necessarily result in a dilution of the assets to which they were entitled under the plan of reorganization.

The Circuit Court of Appeals failed to realize that once a plan of reorganization completely dispositive of the assets and property in the custody of the court available for the creditors and other parties in interest has become

final, the curtain has fallen, and the subsequent disposition of incidental matters over which the District Court has retained jurisdiction has no more significance than curtain bows.

The Circuit Court of Appeals apparently believed that the amendment of its judgment so as to provide some discretion to the District Court as to whether or not the proceeding should now be reopened would cure the error therein. However, it is clear that the mandate of the Circuit Court must be interpreted as informing the District Court that it still has jurisdiction to open the proceeding and let in the respondent as a creditor claimant if it considers that for cause shown the respondent has not been guilty of laches. As hereinbefore pointed out, however, the matter goes to the jurisdiction of the District Court; and we firmly believe that the record shows that jurisdiction is completely lacking. Consequently, the effect of the judgment of the Circuit Court of Appeals is to harass and embarrass the petitioners and the reorganized company by a further needless continuance of the proceeding and a delay in the entry of the final decree.

It is respectfully submitted that in view of the importance of the question involved and the obvious conflict between the decision of the court below and the provisions of the Bankruptcy Act, as amended, the writ of certiorari should be granted.

Respectfully submitted,

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